

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FILED

U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JUN 27 2007

DAVID J. MALAND, CLERK

BY

DEPUTY _____

UNITED STATES OF AMERICA

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§

§

v.

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THOMAS WILLIAM MESSER, JR.

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CASE NO. 4:02cr100

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on June 12, 2007, to determine whether the Defendant violated his supervised release. The Defendant was represented by Bobbie Peterson Cate. The Government was represented by Maureen Smith.

On September 18, 2003, the Defendant was sentenced by the Honorable Paul Brown, United States District Judge, to twenty-six (26) months custody followed by a four (4) year term of supervised release for the offense of Conspiracy with Intent to Distribute Controlled Substance. On December 6, 2004, the Defendant completed his period of imprisonment and began service of his supervised term. On September 19, 2006, this matter was reassigned to the Honorable Richard A. Schell.

On May 1, 2007, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision. The petition asserted that Defendant violated the following conditions: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall not unlawfully possess a controlled substance; (3) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled

substance, or any paraphernalia related to such substances, except as prescribed by a physician; (4) Defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered; (5) Defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer; (6) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer; (7) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as the defendant is released from the program by the probation officer; and (8) Defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

The petition alleges that Defendant committed the following violations: (1) On September 30, 2006, Defendant was arrested by the Lake Dallas Police Department during the execution of a search warrant at 529 Meadowbrook, Lake Dallas, Texas and charged with two felony counts of Possession of a Controlled Substance-methamphetamine and cocaine; (2) During the September 30, 2006 arrest, Defendant was arrested with Chadwick Jason Parmley, a co-defendant in the instant offense; (3) On January 23, February 9 and 27, 2007, Defendant submitted urine specimens that tested positive for methamphetamine; (4) On February 17, March 6, 12, 13, 17, and 20, 2007, Defendant failed to attend and participate in drug aftercare at Addiction Recovery in Lewisville, Texas as instructed; (5) Except for two calls, Defendant ceased calling the random drug testing line as of March 7, 2007; (6) Defendant was unsuccessfully discharged from drug aftercare on March 21,

2007; (7) Defendant failed to report to the U.S. Probation Office on March 21, 2007; and (8) Defendant failed to submit a written monthly report within the first five days for the months of August, September, October of 2006, and February and March of 2007.

At the hearing held before this Court on June 12, 2007, the Government amended the allegations in its Petition by withdrawing the allegation that Defendant had violated the condition requiring him to participate in a program of testing and treatment for drug abuse. Prior to the Government putting on its case, the Defendant entered a plea of true to the alleged violations, as amended by the Government at the hearing. At the hearing, the Court recommended that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of fifteen (15) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Seagoville, Texas.

SIGNED this 16 day of June, 2007.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE